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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/715,164

11/17/2003

Richard Watson

VAC.785A.US

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7590

06/05/2007

KINETIC CONCEPTS, INC.

ATTN: LEGAL DEPARTMENT INTELLECTUAL PROPERTY

P.O. BOX 659508

SAN ANTONIO, TX 78265

EXAMINER

BOGART, MICHAEL G

ART UNIT

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06/05/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/715,164	Applicant(s) WATSON, RICHARD	
	Examiner Michael G. Bogart	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) .
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>14 December 2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 21-47 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 11/200,837. Although the conflicting claims are not identical, they are not patentably distinct from each other because the '837 application claims every material limitation of the instant invention.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 21-47 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4 of copending Application No. 11/004,586. Although the conflicting claims are not identical, they are not patentably distinct from each other because the '586 application claims every material limitation of the instant invention.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 21-47 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-84 of copending Application No. 10/818,468. Although the conflicting claims are not identical, they are not patentably distinct from each other because the '468 application claims every material limitation of the instant invention..

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21-26, 29-34 and 37-47 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hunt *et al.* (GB 2 307 180 A; hereinafter: "Hunt") in view of Maher *et al.* (US 5,549,585 A; hereinafter: "Maher").

Regarding claims 21, 29 and 37-47, Hunt teaches a personally portable vacuum desiccator (210) for collecting and storing liquid exudates from a wound or incision on a user comprising:

a chamber (100);

a vacuum pump member (6) in gas/liquid communication (52) with the outlet port of the chamber (6);

a motor (6A) operably connected to said vacuum pump (6); and

a tube (101) having a first end in fluid communication with said chamber (100) and a second end in fluid communication with the wound or incision to transmit the liquid exudates from the wound or incision to the chamber (100);

said vacuum desiccator (210) being transportable;

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said vacuum pump (6) being operable to draw fluid from the wound or incision through said tube (101) and into said chamber (100)(figures 1 and 3A, infra).

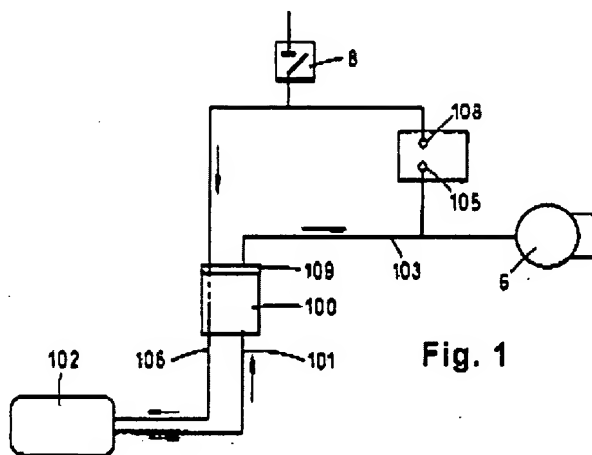


Fig. 1

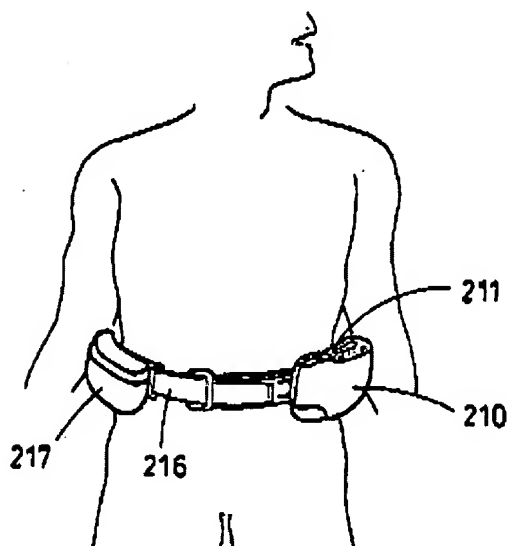


Fig. 3A

Hunt thus teaches the claimed invention except for the trapping agent in the chamber.

Maher teaches a bodily fluid collect receptacle (20) to which an absorbent gelling treatment is added to the interior thereof to solidify liquid exudates. This avoids hazards associated with spillage (abstract)(see fig. 5, infra).

Regarding the functional limitations of the claims, apparatus claims must be structurally distinguishable over the prior art. MPEP § 2114.

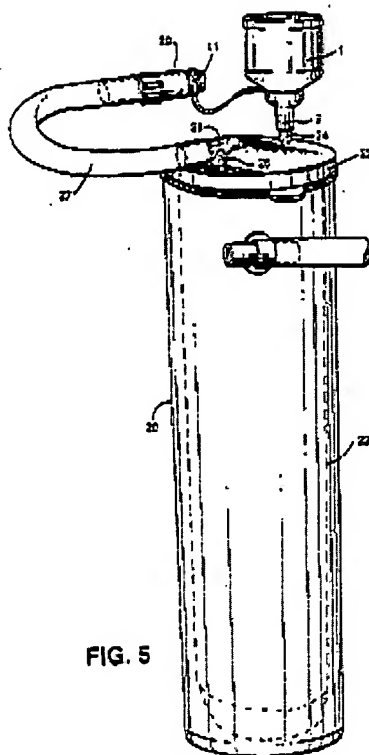


FIG. 5

At the time of the invention, it would have been obvious to one of ordinary skill in the art to add the absorbent additive of Maher to the canister of Hunt in order to resist sloshing or spillage.

Regarding claims 22 and 30, Maher teaches a trapping agent that is an absorbent (col. 2, lines 19-27).

Regarding claims 23 and 31, Hunt teaches a tube (101) comprising a single passage flow path (see fig. 1, supra).

Regarding claims 24 and 32, Maher teaches a trapping agent disposed in a removable cartridge (1).

Regarding claims 25 and 33, Hunt teaches a control circuit (105) which controls the motor (6A) and pump (6)(col. 6, lines 6-11).

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Regarding claims 26 and 34, Hunt teaches a pressure sensor (105).

Claims 27 and 35 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hunt and Maher as applied to claim 25 above, and further in view of Lichtenstein (US 4,464,172).

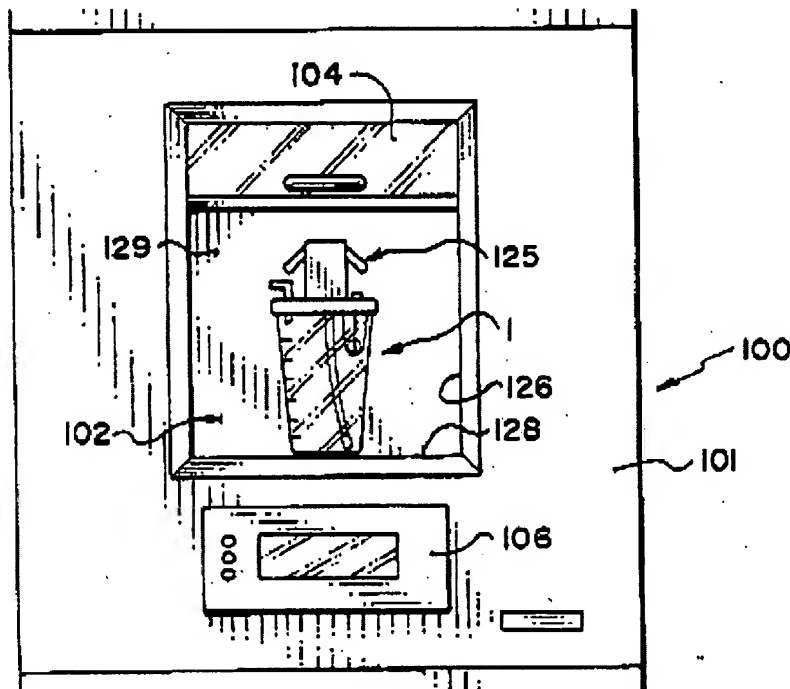
Hunt and Maher do not teach an I/O unit.

Lichtenstein teaches an automated medical care system that employs a pressure sensor (PS2) and an I/O circuit (101). At the time of the invention, it would have been obvious to one of ordinary skill in the art to add these elements to the device of Hunt and Maher in order to automate its functions. See *In re Venner*, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958) (Appellant argued that claims to a permanent mold casting apparatus for molding trunk pistons were allowable over the prior art because the claimed invention combined "old permanent-mold structures together with a timer and solenoid which automatically actuates the known pressure valve system to release the inner core after a predetermined time has elapsed." The court held that broadly providing an automatic or mechanical means to replace a manual activity which accomplished the same result is not sufficient to distinguish over the prior art.). MPEP § 2144.04 (III).

Claims 28 and 36 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hunt and Maher as applied to claims 1-25 above, and further in view of Walker (US 5,741,237 A).

Hunt and Maher fail to claim a limitation where the chamber is transparent. Walker teaches that it is known in the art to use transparent canisters (1) for containing such material in order to visually inspect its content without opening the device (see fig. 2, *infra*).

At the time of the invention, it would have been obvious to one of ordinary skill in the art to add the transparent feature of Walker to the device of Hunt and Maher in order to allow such a person to visibly see the interior of the device.



Response to Arguments

Applicant's arguments filed 12 March 2007 have been fully considered but they are not persuasive.

In response to applicant's argument that Maher teaches that a vacuum source must be disconnected before introducing the agent into receptacle (20), the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ

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871 (CCPA 1981). In the rejection *supra*, Maher is applied as a secondary reference for the general disclosure of a collection receptacle using a trapping agent, specifically a gelling agent, in a fluid waste collection receptacle. Additionally, Maher teaches a valve (28) that incorporates moisture sensitive beads that swell when contacted by liquid, the beads being inside the receptacle while it is in communication with a vacuum source. The valve terminates communication with the vacuum source when the receptacle is full (col. 5, lines 5-22).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization

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where this application or proceeding is assigned is (571) 273-8300 for formal communications.

For informal communications, the direct fax to the Examiner is (571) 273-4933.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael Bogart
25 May 2007.

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

